

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

SOMBOON WEITZEL, §
INDIVIDUALLY AND AS PERSONAL §
REPRESENTATIVE OF THE ESTATE §
OF HULBERT FREDERICK WEITZEL, §
DECEASED AND AS ASSIGNEE OF §
RICK LYNN WEITZEL, BRUCE §
STEPHEN WEITZEL, KAREN ANN §
WEITZEL, CLIVE JEFFERY WEITZEL, §
TRAVIS DALE WEITZEL, DEBRA §
NONG WEITZEL AND DREW §
FREDERICK WEITZEL §
Plaintiff, §

VS. §

HOME DEPOT USA, INC., §
Defendant. §

CIVIL ACTION NO. 1:19-cv-72

DEFENDANT HOME DEPOT U.S.A., INC.'S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant Home Depot U.S.A., Inc. ("Home Depot"), who files this its Notice of Removal, on the basis of diversity jurisdiction, and would show the Court as follows:

1. Home Depot is the Defendant in a civil action pending in Hays County, Texas, entitled *SOMBOON WEITZEL, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HULBERT FREDERICK WEITZEL, DECEASED AND AS ASSIGNEE OF RICK LYNN WEITZEL, BRUCE STEPHEN WEITZEL, KAREN ANN WEITZEL, CLIVE JEFFERY WEITZEL,*

TRAVIS DALE WEITZEL, DEBRA NONG WEITZEL AND DREW FREDERICK WEITZEL VS. HOME DEPOT, U.S.A., INC., Cause No. 19-0053 (hereinafter referred to as the "State Court Action"). An Index of Documents Filed with the Notice of Removal is attached hereto as Exhibit "A," and true and correct copies of all process, and pleadings, served upon Home Depot in the State Court Action are attached hereto as Exhibit "B," as required by 28 U.S.C. §1446(a).

2. The State Court Action was filed on January 9, 2019. Home Depot was served with Plaintiff's Original Petition on January 11, 2019. Plaintiff's Petition states Plaintiff is seeking damages over \$1,000,000.

3. This notice is timely filed within thirty (30) days of Home Depot's receipt of first notice that this Court has jurisdiction over the subject matter of this case as required by 28 U.S.C. §1446(b), and within one year of the commencement of the lawsuit.

4. Plaintiff Somboon Weitzel is and was at the time of suit filing a citizen of the State of Texas.

5. Home Depot is and a corporation incorporated under the laws of the State of Delaware with its principal place of business in Atlanta, Georgia. Home Depot is and was, therefore, a citizen of the State of Delaware and Georgia.

6. Consequently, the district courts of the United States have original jurisdiction over this action based on completely diversity of citizenship amongst and between the parties, in that Plaintiff, on the one hand, and Home Depot, on

the other hand, are now, and were at the time this action commenced, diverse in citizenship from each other.

7. The amount in controversy in the State Court Action is in excess of \$75,000.00, exclusive of interests and costs. Accordingly, the State Court Action is within the original jurisdiction of this Court pursuant to 28 U.S.C. §1332, as it is a civil action wholly between citizens of different states, and, the amount in controversy is in excess of the Court's jurisdictional minimum for diversity cases.

8. Under 28 U.S.C. §1446(a), venue of the removed action is proper in this Court as it is the district embracing the place where the State Court Action is pending.

9. Pursuant to 28 U.S.C. §1446(d), Home Depot will promptly give written notice of the filing of this notice of removal to Plaintiff and will further file a copy of this Notice of Removal with the District Clerk of Hays County, Texas, where the action was previously pending.

10. **Jury Demand** – Home Depot hereby requests trial by jury on all issues and claims in this cause.

WHEREFORE, Defendant Home Depot U.S.A., Inc. hereby removes the case styled *SOMBOON WEITZEL, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HULBERT FREDERICK WEITZEL, DECEASED AND AS ASSIGNEE OF RICK LYNN WEITZEL, BRUCE STEPHEN WEITZEL, KAREN ANN WEITZEL, CLIVE JEFFERY WEITZEL, TRAVIS DALE WEITZEL, DEBRA NONG WEITZEL AND DREW FREDERICK WEITZEL VS.*

HOME DEPOT, U.S.A., INC., Cause No. 19-0053, and respectfully requests that this Court assume full jurisdiction of this proceeding for all purposes as if originally filed in this Court, including but not limited to issuing any orders necessary to stay proceedings in the State Court Action.

Respectfully submitted,

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By: /s/ Amy C. Welborn

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ATTORNEYS FOR DEFENDANT
HOME DEPOT U.S.A., INC.

CERTIFICATE OF SERVICE

I hereby certify by my signature above, that a true and correct copy of the foregoing document has been sent by e-filing to counsel of record, in accordance with the Texas Rules of Civil Procedure on this 31st day of January, 2019.

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